IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 225 OF 1993
with
CROSS OBJECTIONS

The United India Insurance Co.Ltd.... Appellant.

V/s.

1. Smt.Nanda Maruti Dalvi,

2. Vaishali Maruti Dalvi,

3. Vijaya Maruti Dalvi,

4. Vinayak Maruti Dalvi,

5. Chetan Maruti Dalvi,

6. Jagannath Krishna Dalvi,

7. Sou.Rukmini Jagannath Dalvi.

8. Deepak M. Chandarana. ... Respondents.

S.M.Vidyarthi for the appellant.

P.B.Shah for respondent Nos.1 to 7.

CORAM : D.G.DESHPANDE, J.

DATED : 3rd February, 2005.

P.C. :

. The First Appeal No.225/1993 is filed by the Insurance Company and the Cross-objection is filed by the original claimant. The insurance company has challenged the award on the ground that on the date of the accident the vehicle in question was not insured and, therefore, they are not liable to pay the compensation. The cross-objection is filed by the original claimant for enhancement.

2. I heard both the learned counsel in respect of appeal as well as cross-objection.

3. The accident in question occurred on 4th August, 1988. The learned counsel for the appellant - insurance company contended that the vehicle came to be insured with them on 5th August, 1988 and, therefore, on 4th August, 1988 the vehicle in question was not insured and, therefore, no liability could be fixed against them. However, learned counsel for the claimant from the evidence of the witness of the insurance company itself showed that earlier the vehicle in question being Truck No.MWU-3812 was insured from 28th July, 1988 to 27th July, 1989 and the policy was also issued to the owner of the truck. Therefore, it cannot be said that on the date of accident the truck was not insured.

4. The learned counsel for the insurance company further contended that the policy which was issued to the owner of the truck effective from 28th July, 1988 to 27th July, 1989 came to be cancelled because the cheque issued by the truck owner was dishonoured by the Bank. The said cheque was issued on 28th July, 1988 which was dishonoured by the bank

on 1st August, 1988 and the insurance company got knowledge from the bank on 2nd August, 1988. According to the learned counsel for the appellant, the insurance company immediately informed the truck owner about dishonour of the cheque and about cancellation of the policy.

5. It is difficult to accept the submission of learned counsel for the appellant because it is clear from the evidence of the witness No.1 of the insurance company, namely, Shri Sadanand Shinde who was Assistant Divisional Manager of the insurance company who has stated that upon issuance of the cheque the policy was handed over to the truck owner and the letter about cancellation of the policy came to be sent to the truck owner on 29th December, 1988 vide Exh.79.

6. It appears that in order to over come the responsibility the insurance company has tried to fabricate the documents and evidence. In fact, the cheque was dated 28th July, 1988. It was dishonoured by the bank on 1st August, 1988 and the insurance company came to know about it on 2nd August, 1988. Mr.Sadanand Shinde, the then Assistant Divisional Manager, in order to oppose the

claim has referred to in his deposition a letter dated 27th July, 1988 purportedly addressed to the truck owner to the effect that his policy stands cancelled as the cheque was dishonoured. If the cheque itself was dated 28th July, 1988 and dishonoured by the bank on 1st August, 1988 then there is no explanation as to why the insurance company wrote the said letter to the truck owner on 27th July, 1988 i.e. even before the date of issuance of the cheque. This attitude of the insurance company cannot be tolerated. They are a statutory body. They may have right to defend their interest but not in such manner and going to the extent of creating false and fabricated documents. Apart from this there is no merit in the contention of the appellant that there was no insurance on the date of the accident. Therefore the appeal of the insurance company is required to be dismissed.

7. So far as cross-objection is concerned, the learned counsel for the claimant has not pressed the same and seeks permission to withdraw the same. In the result, I pass the following order:

O R D E R

. The appeal is dismissed.

. The cross-objection is disposed of as withdrawn.

. No order as to costs.

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